IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

UNITED STATES OF AMERICA	)	
	)	
	)	Case No. 2:10CR00017
	)	
v.	)	**OPINION**
	)	
JIMMY SCOTT ELKINS,	)	By: James P. Jones
	)	United States District Judge
Defendant.	)	

Jimmy Scott Elkins, Pro Se Defendant.

The defendant, Jimmy Scott Elkins, has filed a pro se Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C.A. § 2255 (West Supp. 2012), asserting claims of ineffective assistance of counsel and court error. The record reflects that Elkins' direct appeal is currently pending before the United States Court of Appeals for the Fourth Circuit. Therefore, I find that Elkins's § 2255 motion must be dismissed without prejudice.

The well established general rule is that, absent extraordinary circumstances, the district court should not consider § 2255 motions while a direct appeal is pending. *See United States v. Weaver,* No. 97-6443, 1997 WL 468277, at *1 (4th Cir. Aug. 18, 1997) (unpublished) (citing *Bowen v. Johnston,* 306 U.S. 19, 26-27 (1939)). Elkins's motion fails to present extraordinary circumstances compelling this court to address his claims under § 2255 during the pendency of his direct appeal. Moreover, dismissal of the § 2255 motion without prejudice will not prevent Elkins from pursuing relief under § 2255 after appeal proceedings are completed. *Villanueva v. United States*, 346 F.3d 55, 60 (2d Cir. 2003) (finding that prior § 2255 motion dismissed as premature did not trigger successive petition bar).

For these reasons, I will dismiss the § 2255 motion without prejudice as premature. A separate Final Order will be entered herewith.

DATED: June 18, 2012

/s/ James P. Jones
United States District Judge